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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on
Economic, Social and Cultural Rights

MALI

The Committee reviewed the implementation by Mali of the International Covenant on Economic, Social and Cultural Rights at its 44th meeting held on 30 November 1994, and adopted 1/ the following concluding observations:

A. Review of the implementation of the Covenant in relation to States parties which have failed to report

1. At its seventh session, the Committee on Economic, Social and Cultural Rights decided to proceed to a consideration of the state of implementation of the Covenant on Economic, Social and Cultural Rights in a number of States parties which, despite many requests to do so, have not fulfilled their reporting obligations under articles 16 and 17 of the Covenant.

2. The purpose of the reporting system established by the Covenant is for the States parties to report to the competent monitoring body, the Committee on Economic, Social and Cultural Rights, and through it, to the Economic and Social Council, on measures which they have adopted, the progress made, and

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1/ At its 44th meeting (eleventh session), held on 30 November 1994.

the difficulties encountered in achieving the observance of the rights recognized in the Covenant. Non-performance by a State party of its reporting obligations, in addition to constituting a breach of the Covenant, creates a severe obstacle for the fulfilment of the Committee's functions. Nevertheless, the Committee has to perform its supervisory role in such cases, and must do so on the basis of all reliable information available to it.

3. In situations in which a government has not supplied the Committee with any information as to how it evaluates its own compliance with its obligations under the Covenant, the Committee has to base its observations on a variety of materials stemming from both intergovernmental and non-governmental sources. While the former provide mainly statistical information and apply important economic and social indicators, the information gathered from the relevant academic literature, from non-governmental organizations and from the press tends by its very nature to be more critical of the political, economic and social conditions in the countries concerned. Under normal circumstances, the constructive dialogue between a State party reporting and the Committee will provide an opportunity for the Government concerned to voice its own view, and to seek to refute such criticism and convince the Committee of the conformity of its policies with what is required by the Covenant. Non-submission of reports and non-appearance before the Committee deprives a government of this possibility to set the record straight.

B. Introduction

4. Mali has been a party to the Covenant since 3 January 1976, the date of its entry into force. Since then, it has not submitted a single report. The Committee strongly urges the Government of Mali to live up to its reporting obligations as soon as possible so that the Covenant on Economic, Social and Cultural Rights can be given full effect, for the benefit of the people of Mali. The Committee emphasizes that it considers the non-performance by Mali of its reporting obligations not only as a violation of the Covenant but also as a grave impediment in the way of an adequate application of the Covenant.

C. Factors and difficulties impeding the application of the Covenant

5. The Committee takes note of the fact that the fulfilment by the Government of Mali of the obligations imposed by the International Covenant on Economic, Social and Cultural Rights cannot be evaluated without taking into consideration the political, economic and social conditions prevailing in the country at the present time. In this regard, the Committee is aware that as a land-locked country, rather poor in mineral resources, lacking in organized manufacturing industries, and subject to frequent droughts, Mali has one of the lowest per capita incomes in Africa and in the world. The negative effects of this poverty on the capacity of Mali to effectively implement the articles of the Covenant on Economic, Social and Cultural Rights are further complicated by:

(a) about one third of its population still lives a nomadic or semi-nomadic life;

(b) ethnic conflicts and disturbances;

(c) about 2 million of its population of working age live abroad in temporary or prolonged migration mainly in Europe and the neighbouring countries.

It should be noted, however, that in mid-May an agreement was reached between the Government and the Tuareg rebels. None the less there is considerable concern regarding the future of the agreement, following an escalation of violence.

D. Positive aspects

6. The Committee notes that Mali, despite the dire circumstances just described, has succeeded in returning to a democratic form of government and now possesses a multipartite National Assembly and an independent judiciary. Virtually all of Mali's ethnic and language groups are represented at all levels of government and society. The Committee further notes that the overall human rights situation in Mali continues to improve. It is aware of the efforts made by the Government to liberalize the country's economy, and it welcomes the steps which the Government is taking to integrate women into the formal processes of development. Finally, the Committee notes the existence of an active trade union movement in Mali. The right to strike is recognized in practice.

E. Principal subjects of concern

7. The Committee notes that although the new Constitution of Mali reaffirms that there shall be no discrimination, economic and educational opportunities for women are still disproportionately limited. Thus, according to a recent United Nations report, females in Mali receive only 29 per cent as much schooling as males. The adult literacy rate among women is only half as high as that of men. The Committee also notes that traditional practices as well as existing laws place women at a disadvantage with regard to family and property rights.

8. With regard to Article 6 of the Covenant, the Committee notes with concern that, despite the prohibition of forced labour in the new constitution, debt bondage still exists in the salt mining communities north of Timbuktu. It has to be stated, however, that the number of people treated in this way has decreased and that the Government has assisted in the rehabilitation of former victims.

9. Regarding Article 7, the Committee notes that, although Mali has a detailed labour code, most people gain their living in the informal sector and thus in fact remain unprotected by such legislation. Due to lack of inspectors, legal provisions on occupational safety remain insufficiently enforced.

10. The Committee also notes that the official minimum wage is one of the lowest in Africa. This circumstance has been further aggravated by the recent devaluation of the CFA franc.

11. With regard to Article 10 of the Covenant, the Committee expresses its concern about the fact that, despite legislation to the contrary, child labour

is widespread, above all in the informal sector of the Malian economy. The Committee is also concerned about the prevalent mistreatment of women and the insufficient way in which the Government has addressed this phenomenon.

12. With regard to the rights recognized in Article 11 of the Covenant, the Committee expresses its concern about the further degradation of the standard of living of the population of Mali as a consequence of the devaluation of the CFA franc effected in January 1994. The Committee is also concerned about the precarious situation of food supply in Mali, caused partly by the irregularities of rainfall but also by malfunctioning of the market in agricultural products. According to UNICEF statistics of the late 1980s, the malnutrition rate ranged between 6 and 25 to 30 per cent depending on the year and the region.

13. Regarding the right to health enshrined in Article 12 of the Covenant, the Committee is concerned that child, infant and maternal mortality rates in Mali are still among the highest in the world. Thus, almost one in five children under the age of five dies each year. Approximately 1,000 deliveries per 100,000 births result in the death of the mother. Diarrhoea, malaria and acute respiratory infections, aggravated by malnutrition, alone account for more than 40 per cent of deaths. AIDS is spreading rapidly. With regard to water and sanitation, the average rate of access to water country-wide is about 50 per cent, but as low as 4 per cent in the difficult terrain of the north of the country. The overall rate of access to sanitation facilities is estimated at approximately 15 per cent. The geographical distribution of health services and personnel continues to show a heavy urban bias.

14. The Committee expresses its profound concern about the prevalence of traditional practices of female genital mutilation, to which, according to one expert, as many as 75 per cent of girls and women in Mali are being subjected. Even though the Government attempts, by means of radio and television broadcasts, to discourage female circumcision, legislation in effect for 30 years prohibiting such practices has never been enforced.

15. With regard to the right to education recognized in Article 13 of the Covenant, the Committee is concerned about the high rate of illiteracy (adult illiteracy averaged 68 per cent: males 59 per cent, females 76.1 per cent) in Mali. The Committee is further concerned about the fact that Mali has shown only modest progress in terms of educational standards over the last 20 years and has actually been regressing over the past 10 years. Formal primary schooling still does not appear to meet the needs of the population despite efforts by the Government. The rate of school enrolment in Mali is among the lowest in the world. Enrolment in primary schools included only 15 per cent of children in the relevant age group (males 17 per cent, females 14 per cent); secondary enrolment is equivalent to only 7 per cent of children in the appropriate age group (males 10 per cent, females 5 per cent). Many students receive higher education abroad, mainly in France and Senegal. Repeat and drop-out rates are very high; only 7 per cent of pupils complete the primary education cycle each year. Most of the recurrent education budget goes to teachers' salaries. Yet 20 per cent of the teachers are not in school but are assigned to other duties.

F. Suggestions and recommendations

16. The Committee urges the Government to undertake every effort to ensure that measures of economic liberalization and structural adjustment will not adversely affect the most vulnerable groups within Malian society.

17. The Committee reiterates its request that the Government of Mali actively participate in a constructive dialogue with the Committee as to how the obligations arising from the International Covenant on Economic, Social and Cultural Rights can be fulfilled in a more adequate manner. It calls to the Government's attention the fact that the Covenant creates a legal obligation for all States parties to submit periodic reports and that Mali has been in breach of this obligation for many years.

18. The Committee recommends that the Government of Mali avail itself of the advisory services of the United Nations Centre for Human Rights in order to enable it to submit as soon as possible a comprehensive report on the implementation of the Covenant in conformity with the Revised General Guidelines adopted by the Committee in 1990 (E/C.12/1991/1) and with particular emphasis on the issues raised and concerns expressed in the present concluding observations.

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COMMITTEE ON ECONOMIC, SOCIAL
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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLES 16 AND 17 OF THE COVENANT

Preliminary concluding observations of the Committee on Economic, Social and Cultural Rights

SURINAME

1. At its 54th and 55th meetings held on 8 December 1994, the Committee considered the initial report of Suriname on articles 1 to 15 of the Covenant (E/1990/5/Add.20) and adopted* the following concluding observations.

2. The Committee welcomes the report submitted by the Government of Suriname in 1993. It regrets that the Government was not present to introduce its report before the Committee and did not submit answers to the written list of issues, which necessitated consideration of the report without the Government's presence. The Committee points out that failure by States parties to appear at Committee meetings as scheduled, with notice provided in the case of Suriname only one day prior to the scheduled meeting, is disruptive to the dialogue between the Committee and the State party and hinders the Committee in arriving at an accurate assessment of the State party's compliance with the Covenant.

3. The Committee requests the Government in the strongest possible terms to submit replies in writing to the list of issues as soon as possible.

4. The Committee will adopt its final concluding observations in relation to Suriname at its twelfth session and for this purpose will take full account of the information available to it from all sources.

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* At its 55th meeting (eleventh session) held on 8 December 1994.

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ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on
Economic, Social and Cultural rights

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

1. The Committee considered, at its eleventh session, the second periodic reports submitted by the United Kingdom of Great Britain and Northern Ireland (dependent territories) on articles 10 to 12 (E/1986/4/Add.27 and E/1986/4/Add.28) and on articles 13 to 15 (E/1990/7/Add.16) of the Covenant as well as additional information (E/1989/5/Add.9) submitted pursuant to the consideration of the second periodic report of the United Kingdom concerning rights covered by articles 10 to 12 of the Covenant. The Committee considered those reports at its 33rd and 34th meetings held on 23 November 1994, and paid particular attention to the specific situation of Hong Kong at its 34th, 36th and 37th meetings held on 23, 24 and 25 November 1994. After having considered those reports, the Committee adopted 1/ the following concluding observations:

Introduction

2. The Committee notes that the reports submitted by the State party have been prepared in accordance with the Committee's guidelines. It welcomes the presence of a high level delegation composed of representatives from the United Kingdom of Great Britain and Northern Ireland and from Hong Kong. It notes with satisfaction that the information submitted in the reports and that

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1/ At the 53rd meeting (eleventh session), held on 7 December 1994.

provided by the delegation in reply to both written and oral questions enabled the Committee to obtain a comprehensive view of the extent of the State party's compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights. The Committee also appreciates the submission of written replies to its list of issues. The Committee considers that the content and form of the dialogue established between the delegation and the Committee was, in many respects, highly satisfactory.

3. The Committee was especially appreciative of the constructive manner in which the delegation referred to and responded to the contributions of non-governmental organizations to the Committee's review of the implementation of the Covenant in Hong Kong.

PART ONE

Implementation of articles 10 to 12 and 13 to 15 of the Covenant in the United Kingdom of Great Britain and Northern Ireland and its Dependent Territories (with the exception of Hong Kong)

A. Positive aspects

4. The Committee welcomes the enactment in recent years of a number of laws which aim to promote the safeguarding and enjoyment of the rights guaranteed by the Covenant. It appreciates, in particular, the adoption of the Education Act 1993 and of the Code of Practice on the Identification and Assessment of Special Educational Needs and notes that the latter was issued in May 1994 to identify and assess children with special educational needs and provide for their education whenever possible in mainstream schools. It also welcomes the Local Government and Housing Act 1989 and the Homelessness Code of Guidance for Local Authorities which aim at overcoming certain difficulties in the implementation of the right to housing as specified in article 11 of the Covenant.

5. The Committee takes note with interest of the efforts undertaken by the Government to promote self rule in the various Dependent Territories and to enhance public awareness of and ability to exercise economic, social and cultural rights.

B. Factors and difficulties affecting the implementation of the Covenant

6. The State party reported no specific factor or difficulty affecting the implementation of the Covenant. The Committee, however, notes that notwithstanding the absence of such an information in the reports it is clear that certain economic and social difficulties continue to be faced by the most vulnerable segments of society, partly as a result of the imposed budgetary constraints.

7. The Committee notes that while the small size and therefore limited human and material resources of most of the Dependent Territories might result in certain difficulties, the fact remains that the rights recognized in the Covenant must be fully implemented even if this requires additional efforts and resources from the United Kingdom Government.

C. Main subjects of concern

8. The Committee regrets that it has not been felt possible to include in the reports submitted to the Committee concerns and views expressed by the public and non-governmental organizations, including in the relevant territories. In that regard, the Committee recalls that the meaning of the reporting procedure is precisely to focus attention and debate on the implementation of the rights guaranteed by the Covenant. Similarly, judges and other members of the legal profession have not given sufficient consideration to the importance of this Covenant within domestic law. The Committee considers that availability of the reports in the library of the House of Commons is insufficient to satisfy the interest of a public at large.

9. The Committee notes the concern expressed to it about the situation of Gibraltar in relation to the right to self-determination recognized in article 1 of the Covenant and calls upon all parties to the existing situation to ensure full respect for all the rights recognized in the Covenant in relation to future developments concerning Gibraltar.

10. The Committee takes note with concern that insufficient measures have been taken to address the apparent disparities in employment patterns and opportunities of certain minority groups and between men and women. In the latter regard, it is regretted that women are still employed disproportionately in lower paid occupations.

11. The Committee is concerned about difficulties faced in the implementation of article 11 of the Covenant. In this context, it regrets that a large number of households have experienced harassment or illegal eviction and notes that the national housing policy is not adequate to address this problem which particularly affects private tenants who are single parents, have low incomes or, in general, are among the most vulnerable groups of society. The Committee also notes with concern that serious difficulties continue to be faced regarding the enforcement of improvements to unsafe housing in England and Wales as well as in the handling by the authorities of the growing problem of homelessness.

12. The Committee considers the situation of disadvantaged groups in the education system to be of particular concern. It specifically notes the grave disparities which appear to prevail in the level of education depending on the social origin of the pupil. Regional differences in the quality of the education provided to children is also a matter of concern.

13. The Committee regrets that insufficient measures have been taken towards the development of a universal pre-school education scheme. It is concerned at the relatively low proportion of 16 to 18 years old individuals who continue in full time education, the large number of children who do not complete their schooling and the growing reliance in the context of the education system reform upon voluntary contributions by parents. The Committee also regrets the lack of sufficient opportunities available to persons with disabilities to pursue their right to education within the mainstream.

D. Suggestions and recommendations

14. The Committee recommends that appropriate measures be taken to disseminate information on the rights guaranteed under the Covenant to all sectors of the society, particularly to judges, civil servants, social workers and members of other professions concerned by its implementation. The Committee encourages the United Kingdom of Great Britain and Northern Ireland to take into account the General Comment No. 1 of the Committee in the preparation of its next periodic report, in order to enhance the transparency of government policy-making with respect to economic, social and cultural sectors of the society.

15. The Committee underlines that efforts should be taken to identify the needs of disadvantaged groups in the field of education and to draw on the results of any studies or reviews in the development of policy initiatives to respond to the needs of such groups. The Committee also recommends that priority should be given to expand the access to pre-school education and to develop basic skill programmes in reading, writing and numeracy, particularly to the benefit of children up to the age of 7 years. Appropriate school training should also be made available to long-term unemployed persons.

16. In view of the existing situation of older persons and of persons with disabilities the Committee urges the Government to make an enhanced effort to assess the needs of these groups in relation to their rights under articles 13 to 15 of the Covenant.

17. The Committee urges the State party to improve its monitoring of the problem of inadequate housing and to develop more active and focused measures to improve the situation. In this connection, it draws the attention of the State party to the provisions of its General Comment No. 4.

PART TWO

Implementation of articles 10 to 12 and 13 to 15 of the Covenant in Hong Kong

A. Positive aspects

18. The Committee notes with interest that Hong Kong has prospered economically to a degree that places considerable material resources at the disposal of the Government to enhance the enjoyment of economic, social and cultural rights in Hong Kong. The Committee acknowledges the significant number of measures that the Government has undertaken in relation to the rights enshrined in the Covenant.

19. The Committee notes with satisfaction the efforts made by the Hong Kong Government to make available to the Hong Kong community the text of the Covenant and the report submitted to the Committee. It welcomes the commitment made that in future, the draft report will be circulated for public comment.

20. The Committee welcomes the terms in the Sino-British Joint Declaration and the Basic Law which affirm that the provisions of the Covenant will remain in force and continue to apply to Hong Kong after 1997. The Committee also

welcomes the incorporation of the Covenant as a justiciable constitutional guarantee in article 39 of the Basic Law. While the Committee realizes that the continuation of reporting in respect of Hong Kong after 1997 may pose some legal and technical problems, it emphasizes the very important role played by reporting in relation to the protection of economic, social and cultural rights. The Committee is aware that there are various options by which these problems may be overcome. On this basis the Committee affirms its willingness and indeed its strong wish to receive reports on Hong Kong from the People's Republic of China or, if the authorities so decide, directly from the Hong Kong Special Administrative Region. In the meantime, especially in view of the commitments entered into in the Joint Declaration, the Committee hopes that the People's Republic of China will accede to the Covenant.

B. Factors and difficulties affecting the implementation of the Covenant

21. The Committee notes that uncertainties arising from the anticipated transfer of sovereignty to China in 1997, have apparently resulted in the reluctance on the part of the Hong Kong Government, to seek to its maximum capacity, the protection and promotion of the economic, social and cultural rights of its constituents.

C. Principal Subjects of Concern

22. The Committee regrets that the provisions of the International Covenant on Economic, Social and Cultural Rights are not incorporated into Hong Kong domestic law unlike the International Covenant on Civil and Political Rights. The Committee finds unacceptable the view expressed by the Government that the rights enshrined in the International Covenant on Economic, Social and Cultural Rights are "different in nature" from civil and political rights and therefore not capable of being the subject of an enforcement procedure under domestic law.

23. The Committee is concerned that the relatively low-level of awareness of, and interest in, international human rights law on the part of the judiciary results in the inadequate consideration of the provisions of the Covenant in judicial decision-making to the extent that is permitted by the common law system.

24. The Committee expresses its concern that in spite of recent Government initiatives to introduce legislation concerning non-discrimination in relation to sex and disability, there is an absence of comprehensive legislation providing protection against discrimination on the grounds referred to in article 2 of the Covenant. The Committee notes with concern that the Government's proposed legislation on sex discrimination includes a number of exclusions and exemptions - in particular the so-called small-house policy - which discriminate against women.

25. The Committee is concerned at the Government's clear objection to the establishment of a human rights commission.

26. The Committee is particularly disturbed at the problem of split families in Hong Kong, especially where it concerns spouses who are forced to live apart from each other and children who are separated from parents and

siblings. The Committee is of the view that this situation is the result of Hong Kong's present immigration law, and considers that the separation of families is inconsistent with the obligations under article 10 of the Covenant.

27. The Committee is also concerned that in the case of Hai Ho-Tak, it has received conflicting explanations as to the reasons for the separation of the child from his parents and as to which authorities are in a position to resolve the problem. The Committee finds these reasons unconvincing and maintains its concern that unduly broad bureaucratic reasons have been used as a justification for a measure which is not compatible with the rights recognized in article 10. The suggestion that the child's parents should apply for a one-way permit would not appear to be an adequate solution given the very lengthy delay that would result. The Committee urges the Government to again reconsider its response to this case. It also notes that no compelling reason has been offered by the Government for its refusal to provide a statutory right of appeal in immigration cases which involve exceptional circumstances of a humanitarian nature and urges that this principle should also be reconsidered.

28. The Committee is deeply concerned by the information it has received concerning the treatment of Vietnamese asylum-seekers in Hong Kong. It is particularly concerned about the situation of the children and is alarmed by the statements made by the Government that these children have no entitlement to the enjoyment of the right to education or to other rights in view of their status as "illegal immigrants". The Committee considers the situation inconsistent with obligations set forth in the Covenant.

29. The Committee expresses its concern about the legal and social position of foreign employees known as domestic helpers in Hong Kong. It considers that these workers' economic, social and cultural rights are seriously impaired by the so-called two-week rule which provides that a worker may neither seek employment nor stay more than 2 weeks in Hong Kong after the expiration of original employment; by the fact that maximum working hours are not set; and by the discriminatory practice of not being allowed to bring their families to Hong Kong, while professional migrant workers from developed countries are allowed to do so.

30. The Committee deplores the plight of persons - most of whom are elderly - living in sub-human conditions in "cage homes", and considers unacceptable the inaction of the Hong Kong Government despite abundant financial resources at its disposal.

31. The Committee notes with concern that the present level of social security payments available to the elderly appears to be insufficient to permit them to enjoy fully their rights under the Covenant. It is particularly concerned about the health and social problems facing elderly people who are totally dependent on Comprehensive Social Security Assistance payments.

D. Suggestions and Recommendations

32. The Committee urges the Government of the United Kingdom to inform the Committee as soon as possible of the modalities arrived at in agreement with the Government of China by which the reporting obligations under the Covenant will continue after 1997.

33. The Committee enjoins the Government of Hong Kong to establish procedures to allow an appropriate body to adjudicate on complaints of infringement of the rights under the Covenant, and to allow the Hong Kong legislature to consider the desirability of establishing a human rights commission.

34. The Committee recommends that competent authorities responsible for continuing legal education for the judiciary, take active steps to ensure that Hong Kong judges are appropriately updated on a continuing basis, on developments in international human rights law.

35. The Committee recommends that the Government should take immediate steps to introduce a comprehensive anti-discrimination legislation especially in relation to all forms of discrimination against women.

36. The Committee recommends a review of the existing immigration policy of Hong Kong with a view to amending the provisions which result in split families.

37. The Committee urges the Hong Kong Government to take immediate steps to ensure that children in refugee camps and those released from them, are accorded full enjoyment of the economic, social and cultural rights guaranteed to them under the Covenant. The Committee also recommends a closer cooperation with volunteer organizations and the United Nations High Commissioner for Refugees.

38. The Committee recommends the repeal of the two-week rule and a review of the employment conditions of foreign domestic helpers to provide the full enjoyment of their rights under the Covenant.

39. The Committee urges the Government to take immediate steps, as a matter of high priority, to eradicate the phenomenon of "cage homes", and to ensure that those presently living in such accommodations are provided with adequate and affordable rehousing. The Committee also urges the Government to seriously consider the embodiment into domestic law of the right to housing.

40. The Committee recommends a review of the existing social security system as soon as possible, with a view to addressing the inadequacies of benefits for the older persons.

41. The Committee considers that Hong Kong is in the fortunate position of having sufficient resources to address its present inadequacies in relation to its obligations under the Covenant, and the Committee urges it to do so as soon as possible.